REMARKS

Claims 1-20 are currently pending in the present patent application. Claims 1-20 are rejected. Claim 13 is amended herein. No new matter has been added. Applicants respectfully request further examination and reconsideration in view of the remarks set forth below.

Claim Rejections

112

Claim 13 is rejected under 35 U.S.C. 112, second paragraph for failing to provide proper antecedent basis. Applicants have amended Claim 13 to provide proper antecedent basis. Applicants respectfully request the rejection be removed.

103

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being obvious over Kazemi (7,089,281) in view of Hickman (6,523,036). The rejection is respectfully traversed for the following rational.

Applicants direct the Examiner to Independent Claim 1 that recites (emphasis added):

A method of dynamically balancing load in a system of servers, comprising:
a) <u>monitoring</u> for servers that are able to respond to requests directed at the system, <u>including actively discovering new servers in said system of servers</u>;
b) determining a performance metric for a first set of said servers <u>discovered</u> by said monitoring for the servers;
c) maintaining a table comprising said performance metric for said first set of <u>discovered</u> servers; and
d) in response to receiving a request, routing said request to a selected server in the system of servers based on said performance metric, wherein the system of servers comprises the first set of <u>discovered</u> servers.

Applicants submit that Kazemi fails to teach each element of Independent Claim 1. Specifically, Applicant submits that Kazemi fails to teach or suggest (emphasis added) "<u>monitoring</u> for servers <u>that are able to respond to requests directed at the system, including actively discovering new servers in said system of servers</u>," as claimed.

Applicants also submit that Kazemi fails to teach or suggest "determining a performance metric for the first set of servers <u>discovered</u> by said monitoring," as claimed.

As stated previously, Kazemi is used for "storage resources" as opposed to server resources as with the present invention. Applicants would like to point out that there is a distinct difference between the two. For example, in a storage resource system, data that is stored on a server "a" can not be accessed from server "b" because the information is stored on server "a". In a storage system redundancy is used to preserve data in case of failure. With a server resource environment, a request to perform an operation on server "a" can be routed to server "b" as long as server "b" has the required performance metric to respond to the request.

Applicant respectfully submits that Kazemi fails to teach or suggest "monitoring for servers that are able to respond to requests directed at the system including actively discovering new servers in said system of servers," as claimed. In opposition to "monitoring" and "actively discovering" Kazemi relies on a passive system wherein the data storage units report available resources. Applicants submit that receiving reports is very different from actively discovering, as claimed.

In column 11, lines 26-31, Kazemi states "populating the resource table as information is received from servers 210 as they come online." With Kazemi, the DSR relies on the servers themselves to report performance information. The passive DSR of Kazemi merely receives data from the servers and does not monitor or actively discover, as claimed.

Kazemi uses a DSR (dynamic session redirector) to provide a single system image for resources that are distributed on many different servers (summary of the invention). "The DSR examines the incoming requests and passes them on to the appropriate resources and then forwards the results of any request to the requesting client." Kazemi teaches "DSR keeps a table of the resources provided by each network storage device." With Kazemi, the locations of resources are known and kept track of in a table. Kazemi fails to teach or suggest discovery of any kind.

In addition, Applicants submit that Kazemi fails to teach or suggest "determining a performance metric for the first set of servers discovered by said monitoring," as claimed. With the present invention, monitoring is used to discover servers capable of responding to a requests including actively discovering new servers in the system of servers.

Performance metrics are then determined for the discovered servers. Applicants submit that Kazemi does not teach or suggest "discovering" servers. With Kazemi, the particular resources and associated servers are known and not discovered since Kazemi is dealing with a storage system and must know where the data is located in order to retrieve it. Furthermore, with Kazemi, the DSR requires the servers themselves to report the performance information which is clearly different from discovering, as claimed.

It is necessary for Kazemi to know where data is stored so the data can be retrieved since Kazemi deals with data storage systems. If Kazemi had to discover where the data was stored, the response time would be severely impacted.

Applicants respectfully submit that Hickman fails to remedy the deficiencies of Kazemi. While Hickman may teach "adding a server cluster," Applicants do not understand Hickman to teach or suggest "actively discovering new servers in the system of servers," as claimed.

"As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries" including "[a]scertaining the differences between the claimed invention and the prior art" (MPEP 2141(II)). "In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious" (emphasis in original; MPEP 2141.02(I)).

Applicants note that "[t]he prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, <u>Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art</u>" (emphasis added; MPEP 2141(III)).

As stated above, Kazemi deals with data storage systems while Hickman deals with servers. Applicants respectfully submit that the teachings of Kazemi can not be applied to Hickman without <u>significant change in operation</u> of Kazemi. For this rational, Applicants respectfully submit that the claimed invention as a whole is not obvious over Kazemi in view of Hickman and that the rejection under 35 U.S.C. 103(a) with respect to Kazemi and Hickman is improper and should be removed.

For this rational, Independent Claim 1 is not obvious over Kazemi in view of Hickman. Independent Claims 1, 8 and 14 recite similar limitations and are also not obvious over Kazemi in view of Hickman. As such, Applicants submit that Claims 1-20 are patentable over Kazemi and respectfully request the rejection be removed.

CONCLUSION

In light of the above remarks, Applicants respectfully request reconsideration of the rejected claims. Based on the remarks presented above, Applicants respectfully assert that Claims 1-20 overcome the rejections of record and, therefore, Applicants respectfully solicit allowance of these Claims.

The Examiner is invited to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present application.

Respectfully submitted,
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